Supreme Court, U.S.
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No. 96-1122

In the
Supreme Court of the United States
October Term, 1997

STEVEN JOHN HARTMANN, D.C.,
and
ROBERT CHARLES HOFFMANN, D.C.,
Petitioners,

v.

NORTHERN SERVICES, INC., N/K/A
HEALTH SERVICES MANAGEMENT, INC.,
A MINNESOTA CORPORATION,
and ROMAN WIELAND, INDIVIDUALLY,
Respondents.

On Petition for Writ of Certiorari to
The Minnesota Supreme Court
and Minnesota Court of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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22 pp

QUESTION PRESENTED

Whether Petitioners' termination from a chiropractic network constitutes a violation of RICO, 18 U.S.C. § 1961 or a "restraint of trade" under Minnesota's antitrust statute.

RULE 29(6) LISTING

Respondent Health Services Management, Inc. is a Minnesota corporation formerly known as Northern Services, Inc. There are no parent companies, subsidiaries or affiliates.

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RESPONDENTS' BRIEF IN OPPOSITION

This case was brought by two disgruntled chiropractors who were terminated from a chiropractic network. Petitioners commenced this action in Minnesota state court in March 1994, alleging a variety of theories including breach of contract, tortious interference with

contract, fraud, defamation, antitrust and RICO violations. The case was dismissed on summary judgment. The Minnesota Court of Appeals affirmed and the Minnesota Supreme Court denied review.

Petitioners now seek to invoke the jurisdiction of the United States Supreme Court. The Petition fails to meet any of the stringent criteria for review by this Court as set forth in Supreme Court Rule 10. Moreover, no constitutional issue was raised below and the assertion of such issues in the Petition is without merit. There is no substantial federal question upon which to base further review by this Court.

JURISDICTION AS ALLEGED BY PETITIONERS

On August 29, 1995, the District Court for the Tenth Judicial District, State of Minnesota, entered an Order granting Respondents' motion for summary judgment dismissing all claims except for a portion of Count I (alleging breach of contract). (Petitioners' Appendix "P. App." 12a).

On September 8, 1995, Respondents moved for reconsideration of the trial court's order as to Count I. By Order dated October 24, 1995, the trial court dismissed the remaining portion of Count I on the basis that Petitioners had failed to prove causal damage. (P. App. 20a). The Minnesota Court of Appeals affirmed the dismissal by unpublished opinion dated July 31, 1996. (P. App. 2a).

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS ALLEGED

Petitioners cite the supremacy clause of Article VI of the United States Constitution: "Laws of the United States...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...." Petitioners also cite a portion of Article I, § 10: "No State shall...pass any...Law impairing the Obligation of Contracts...."

STATEMENT OF THE CASE

HSM is a Minnesota corporation that provides management services to health maintenance and preferred provider organizations such as PreferredOne. In September 1989, Petitioners signed contracts with HSM to participate in the network of chiropractors organized by HSM for PreferredOne. The agreement contained a clear termination provision allowing either party to terminate the contract without cause upon 90 days' notice.

Petitioners were both "high utilizers" meaning they saw their patients more times on average than other providers in the network. HSM advised Petitioners that if they did not reduce their "patient visit averages" they would be terminated from the network. After being terminated from the network, Petitioners sued HSM and Wieland, its former CEO.[1]

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[1]Petitioners claim in their petition that they "contracted individually with Roman Wieland." This is a misstatement of fact; Petitioners produced no evidence of any contractual relationship with Roman Wieland. In dismissing all claims

To avoid the clear at-will termination provision in the contracts they signed, Petitioners tried to bootstrap their way into a separate contract between HSM and PreferredOne. The trial court and Court of Appeals rejected this attempt:

> There is no contractual support for appellants' view that the explicit terminable-at-will provision of the agreement they signed with [HSM] is superseded by the Grounds for Termination paragraph of the contract between [HSM] and PreferredOne. We see no error of law in the district court's holding that the terminable at-will provision is enforceable. (P. App. 5a).

The Court of Appeals further found no error in the trial court's dismissal of Petitioners' other claims. Petitioners sought further review by the Minnesota Supreme Court, which was denied. (P. App. 1a).

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asserted against Wieland, the trial court held: "Plaintiffs have failed to articulate any basis for a cause of action between themselves and Roman Wieland individually." P. App. 24a.

REASONS FOR DENYING THE PETITION

I. Certiorari Is Improper as Petitioners Are Raising Federal Questions For the First Time Before this Court.

It is essential to the jurisdiction of this Court under 28 U.S.C. § 1257 that a substantial federal question has been properly raised in the state court proceedings. Supreme Court Rule 14(1)(g)(i) provides:

> If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.* court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error) so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

This Court has recognized that it is important that state courts be given the first opportunity to consider constitutional

challenges. See Cardinale v. Louisiana, 394 U.S. 437, 439 (1969)(writ denied in view of Petitioner's failure to raise constitutional challenge in state court proceeding). Constitutional challenges must be raised at the outset and not as an afterthought after the party has lost below.

In their Petition, Petitioners reference the supremacy clause of Article VI of the United States Constitution and the impairment of contracts clause of Article I § 10, in an effort to show that a federal question exists. As discussed below, neither provision has any application to this case. Moreover, the Petition entirely fails to specify the stage in the proceedings at which Petitioners raised these or any other constitutional issues. This omission is for one simple reason – these issues were raised for the first time in the Petition to this Court. The constitutional challenges raised in the Petition are devoid of merit and are cause for denial of the Petition. See Zucht v. King, 260 U.S. 174 (1922)(even if constitutional issue is properly raised below, Court will

decline jurisdiction if federal question is not substantial in character); Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390 (1952).

II. The Petition Must Be Denied As Petitioners Failed to Raise a Substantial Federal Question.

It has long been held that this Court will not grant certiorari unless Petitioner presents a substantial federal question:

> The bare averment of a federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay.

New Orleans v. New Orleans Water-Works Co., 142 U.S. 79, 87 (1891); see also Black v. Cutter Laboratories, 351 U.S. 292, 299 (1956)(construction of a private contract under local law does not raise a substantial federal question).

Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a) which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

In an attempt to fit within the provisions of § 1257, Petitioners cite the supremacy clause of Article VI and the impairment of contracts clause of Article I of the United States Constitution. After referencing those two provisions, however, Petitioners offer no analysis of how they apply to this case. Mere reference to the Constitution is insufficient. Herndon v. Georgia, 295 U.S. 441, 442-43 (1935); F.G. Oxley Stave Co. v. Butler County, 166 U.S. 648, (1897) (reference to "Constitution and laws of the United States" is insufficient).

The constitutional provisions relied upon have no application to this case. Article I § 10 of the Constitution, the impairment of contracts clause, applies only to the actions of a state legislature. See, e.g., Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) (Minnesota statute requiring employers to pay pension funding charge when closing an office located within the state held invalid because it impaired established contractual relationships between employers and employees). No legislative action or decision is at issue in this case. The constitutional challenges raised by Petitioners are patently frivolous and do not create a substantial federal question, or any question at all for that matter, to justify review by this Court.

Despite the wide variety of claims in the Complaint, the fulcrum upon which all of Petitioners' claims turned was HSM's decision to terminate Petitioners from the chiropractic network. The trial court found that the contract between Petitioners and HSM was terminable at will and that

Petitioners' termination from the network was proper. The Appellate Court agreed. Construction of a private contract does not present a substantial federal question. See Black v. Cutter Laboratories, 351 U.S. 292, 299 (1956).

The only "federal claim" asserted by Petitioners was under RICO, 18 U.S.C. § 1961 et seq. The trial court dismissed this claim for failure to establish the required predicate acts. Specifically, Petitioners argued that HSM's requirement that participants in the network (including Petitioners) lower their patient visit averages[2] constituted fraud and extortion. Affirming the dismissal of this claim, the Minnesota Court of Appeals stated:

> [Petitioners] offer no support for the view that threatening to terminate employment because of failure to comply with an employer's standard is extortion, nor do they say what property was allegedly obtained from them through the use of fear of economic loss.

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[2]The average number of times a provider sees his or her patients.

(P. App. 9a). Petitioners challenge these factual findings -- not the rule of law as stated by the Minnesota Court of Appeals. Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Supreme Court Rule 10. Petitioners have presented no evidence that the Minnesota courts' dismissal of the RICO claim conflicts with a decision of another state court of last resort or of a United States Court of Appeals. Thus, Petitioners' RICO claim does not present a substantial federal question warranting further review.

III. The Minnesota Courts' Decisions Are Based Upon An Adequate State Ground.

To preserve federalism, this Court will not exercise jurisdiction to review state court judgments resting upon adequate non-federal grounds:

> This Court, from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds.

Herb v. Pitcairn, 324 U.S. 117, 125 (1954). See also Black v. Cutter Laboratories, 351 U.S. 292, 299, (1956).

Contract Claims

Petitioners' breach of contract claims were analyzed and resolved through construction of Petitioners' contracts with HSM. Contract construction is not a federal question. All of Petitioners' breach of contract claims were dismissed on independent and adequate state law grounds.

Tortious Interference

Tortious interference with contract is a state law claim. This claim was dismissed for failure to establish the existence of a single enforceable contract with which Respondents could have interfered. (P. App. 15a). Both the claim and its resolution rested solely on the case law of the State of Minnesota. No federal question exists with respect to this claim.

Fraud Claim

Petitioners' fraud claim was also dismissed for failure to establish essential elements -- including the most basic, a false representation. The claim and its dismissal were based purely on state law principles.

Antitrust Claim

Petitioners' antitrust claim was also dismissed on state grounds.[3] Petitioners advanced two antitrust theories. First, Petitioners argued that HSM violated the antitrust laws by requiring network providers to reduce their patient visit averages. In affirming the dismissal of this claim, the Court of Appeals noted that no evidence had been presented that regulating the number of visits per patient suppresses or destroys competition. (P. App. 6a).

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[3]In the Court of Appeals Petitioners argued that HSM and Wieland had violated federal antitrust law. State courts lack jurisdiction to hear federal antitrust claims, however, and so the claim was construed pursuant to Minn. Stat. § 325 D. 51, the Minnesota Antitrust Statute.

Second, Petitioners claimed that patients were "restrained" from obtaining Petitioners' services once Petitioners were eliminated from the network. In rejecting this argument, the Court of Appeals noted that every managed care medical plan contains financial incentives to use certain providers, thereby "restraining" customers from using other providers. There is no authority to support the proposition that these incentives constitute an antitrust violation.

Petitioners' antitrust claims were brought and resolved pursuant to the Minnesota Antitrust Statute. Although federal case law was used in connection with that analysis, the statute is state law and the Minnesota courts' holdings have no federal precedential effect. There certainly is no substantial federal question with respect to this claim.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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